

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6341 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

SAIYED KASAM ALI

Versus

STATE OF GUJARAT

Appearance:

Mr. Y.S.Lakhani, Advocate for the petitioner.

Mr. B.Y.Mankad, Assistant Government Pleader for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 18/09/97

ORAL JUDGEMENT

Rule. Mr. B.Y.Mankad, learned Assistant Government Pleader waives service of the Rule on behalf of the respondents. At the request of the learned Advocates, this petition is taken up for final hearing to-day.

The petitioner, by way of this petition, is challenging the order dated 22-5-96 at Annexure "C" passed by respondent No.1 confirming the orders dated 12-5-1995 and 16-10-95 passed by the respondents Nos. 3

and 2, respectively, whereby the authorities have forfeited the security deposit and confiscated 239 litres of kerosene worth Rs.609.45 and also cancelled the Hawker's (Feriya) Licence issued to the petitioner in the year 1981 for selling kerosene. It is not in dispute that the petitioner is selling kerosene in pursuance of the licence granted to him since 1981. It is the case of the petitioner that he is carrying on this business honestly and sincerely and that he has committed no irregularities in the past.

The District Supply Officer inspected the licence of the petitioner on 7-2-1995 and found that the petitioner has committed certain irregularities. After verifying the stock register, the District Supply Officer found the following irregularities:

- 1 On verification of the stock register, it was found that there was deficit of 46 litres of kerosene.
- 2 The petitioner tried to disturb the distribution system by supplying kerosene late by 4 days.
- 3 The petitioner did not display on the lorry the name of the licensee, the particulars of the ration card allotted to him, the licence number, and the price of the kerosene per litre.
- 4 Measuring vessel of 5 litres (MAPIYA) was not kept.
- 5 Bill numbers are not printed in the bill book.
- 6 In the bill book business place is shown as Prantij whereas the petitioner distributed kerosene at village Balisana in Prantij taluka.
- 7 At the place of business, except bill book, other records like stock register, licence, sale register etc. are not kept.
- 8 The petitioner has torn off pages in between pages 208 and 209 and has thus tried to tamper with the record.

The petitioner has submitted his explanation to the said show cause notice. However, the authorities have passed the aforesaid orders.

Having heard the learned Advocates at length, I

am of the view that the penalty imposed against the petitioner and more particularly the cancellation of the licence is on the face of it a harsh penalty causing economic death of person like the petitioner. The irregularities alleged to have been committed by the petitioner appear to be technical in nature and they are not serious enough warranting inflictment of the punishment imposed vide the impugned orders. In any case, the irregularities alleged against the petitioner are not such which would affect the flow of the supply of essential commodity to the public at large which may lead to the cancellation of the licence of the petitioner. On mere reading of the allegations made agianst the petitioner, it *prima facie* appears that they are not consistent with each other inasmuch as allegation No.1 says that there was deficit of 46 litres of kerosene which is not in conformity with the stock register. However, allegation No.7 says that at the place of business, except bill book, no other record like stock register is kept. This on the contrary will go to suggest that the petitioner used to maintain stock register. Thereore, allegation No.7 runs counter to allegation No.1. Similarly, considering allegation No.8, wherein it is alleged that the petitioner has torn off pages between bills Nos. 208 and 209 both dated 29-1-1995 and has tried to tamper with the record. It is difficult to understand as to what would be the pages between bill No.208 and Bill No.209 both dated 29-1-95. There is no basis for such an allegation. Apart from this, the other grounds , as stated above, are quite technical in nature and now it is well settled that for all technical irregularities no order of confiscation can be passed and, in any case, the authorities are not justified in cancelling the licence issued to the petitioner. Since the authorities have recorded a positive finding that the petitioner has committed the breach as stated in the notice , which in my view, is technical in nature , even if the finding recorded by the authorities is maintained, the ultimate order of punishment passed by the authorities is on the face of it too harsh and unjust and required to be interfered with. Therefore, the ends of justice would be met with if the impugned order of punishment is suitably modified.

In the result, this petition is partly allowed. The impugned order passed by respondent No.1 is modified to the extent that while the order of confiscation of goods in question and forfeiture of the deposit is confirmed , the penalty of cancellation of licence is set aside. The concerned authorities shall therefore consider the question of granting/renewing the licence of

the petitioner, within two months from the date of receipt of the order, in view of the observations made in this order and without taking into consideration the allegations made against the petitioner in the notice out of which the present proceedings have arisen. Rule is made absolute to the aforesaid extent with no order as to costs. D.S.permitted.

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